

State as defined in §144.103 of this subchapter. A law of the United States applicable to the District of Columbia is treated as a State law rather than a law of the United States.

**Subpart B—HCFA Enforcement Processes for Determining Whether States Are Failing to Substantially Enforce HIPAA Requirements**

**§ 150.201 State enforcement.**

Except as provided in subpart C of this part, each State enforces HIPAA requirements with respect to health insurance issuers that issue, sell, renew, or offer health insurance coverage in the State.

**§ 150.203 Circumstances requiring HCFA enforcement.**

HCFA enforces HIPAA requirements to the extent warranted (as determined by HCFA) in any of the following circumstances:

(a) *Notification by State.* A State notifies HCFA that it has not enacted legislation to enforce or that it is not otherwise enforcing HIPAA requirements.

(b) *Determination by HCFA.* If HCFA receives or obtains information that a State may not be substantially enforcing HIPAA requirements, it may initiate the process described in this subchapter to determine whether the State is failing to substantially enforce these requirements.

(c) *Special rule for guaranteed availability in the individual market.* If a State has notified HCFA that it is implementing an acceptable alternative mechanism in accordance with §148.128 of this subchapter instead of complying with the guaranteed availability requirements of §148.120, HCFA's determination focuses on the following:

(1) Whether the State's mechanism meets the requirements for an acceptable alternative mechanism.

(2) Whether the State is implementing the acceptable alternative mechanism.

(d) *Consequence of a State not implementing an alternative mechanism.* If a State is not implementing an acceptable alternative mechanism, HCFA determines whether the State is substan-

tially enforcing the requirements of §§148.101 through 148.126 and §148.170 of this subchapter.

**§ 150.205 Sources of information triggering an investigation of State enforcement.**

Information that may trigger an investigation of State enforcement includes, but is not limited to, any of the following:

(a) A complaint received by HCFA.

(b) Information learned during informal contact between HCFA and State officials.

(c) A report in the news media.

(d) Information from the governors and commissioners of insurance of the various States regarding the status of their enforcement of HIPAA requirements.

(e) Information obtained during periodic review of State health care legislation. HCFA may review State health care and insurance legislation and regulations to determine whether they are:

(1) Consistent with HIPAA requirements.

(2) Not pre-empted as provided in §146.143 (relating to group market provisions) and §148.120 (relating to individual market requirements) on the basis that they prevent the application of a HIPAA requirement.

(f) Any other information that indicates a possible failure to substantially enforce.

**§ 150.207 Procedure for determining that a State fails to substantially enforce HIPAA requirements.**

Sections 150.209 through 150.219 describe the procedures HCFA follows to determine whether a State is substantially enforcing HIPAA requirements.

**§ 150.209 Verification of exhaustion of remedies and contact with State officials.**

If HCFA receives a complaint or other information indicating that a State is failing to enforce HIPAA requirements, HCFA assesses whether the affected individual or entity has made reasonable efforts to exhaust available State remedies. As part of its assessment, HCFA may contact State officials regarding the questions raised.